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SPECIAL ISSUE ON
PRESIDENTIAL TRANSCRIPTS

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PRESIDENTIAL TRANSCRIPTS: DO THEY SHOW CRIMINAL BEHAVIOR?

On April 30, the President submitted edited transcripts of subpoenaed material to the House Judiciary Committee and released them to the public. An accompanying legal brief concluded that "in all of the thousands of words spoken, even though they are often unclear and ambiguous, not once does it appear that the President of the United States was engaged in a criminal plot to obstruct justice."

The notion that the transcripts show no evidence of criminal activity is easily questioned. In particular, it seems likely that it was questioned by the Watergate Grand Jury. Two of the fundamental crimes at issue in the case are obstruction of justice and conspiracy to defraud the United States. In the March 1 indictment of the seven major figures (Colson, Ehrlichman, Haldeman, Mardian, Mitchell, Parkinson and Strachan), all were charged with one count of conspiracy. But the Grand Jury also referred to "other persons to the Grand Jury *known* and *unknown*" as conspirators (*italics added*). Why?

One of the forty five overt acts cited in furtherance of the conspiracy is a meeting at the White House between Haldeman and Dean from about 11:15 a.m. until noon on March 21, 1973. The transcripts show that the President was an active participant at this same meeting. It is a fair inference that the Grand Jury failed to indict the President only because he was President and, as is known, the Grand Jury instead sent the pertinent information to the House Judiciary Committee.

The transcripts make clear why the Grand Jury might have felt that the President could be charged with conspiracy. As noted in the text of this Report, the transcripts are *prima facie* evidence of the following assertions: He encouraged and ordered the payment of hush money during the March 21 conversation cited in the indictment. The President was informed of, but was willing to ignore, questions of obstruction of justice. He rejected the possibility of full disclosure. He used the notion of investigations by Dean and Ehrlichman as a device to slow down and minimize such disclosure. He indicated that his isolation from the facts was useful and that he did not want to know about various relevant matters. He used executive privilege as a device. He used national security as a rationale for inhibiting and diverting the criminal and Congressional investigations. He tried to prevent John Dean from receiving immunity from

the prosecutors to prevent his telling his story. He sought fall guys, such as former Attorney General John Mitchell, to cut his losses. He was willing to overlook perjury. He relayed information from the prosecutors to the suspected conspirators to assist them in preparing their defenses. He advised their lawyers of confidential information received from the Assistant Attorney General in charge of the case, and he was not candid with him (and thus the prosecutors) about information he had.

This is an extraordinary list of charges to be derived from a single set of documents. Judged by the standards of many conspiracy cases, it is a wealth of evidence.

In the laws on obstruction of justice and conspiracy, the key element is intent, which is assessed by a jury in the case of an ordinary defendant. Juries "may infer that a person ordinarily intends the natural and probable consequences of acts knowingly done or knowingly omitted" (Criminal Jury Instructions for the District of Columbia). Thus they would be permitted to infer that the President intended those acts which followed from Presidential conversations and instructions.

Furthermore, inasmuch as the President knew that his remarks were being taped, the Jury might discount specific potentially self-serving remarks made by him.

In short, the implication of Presidential Counsel that not once does it appear that the President was engaged in a criminal plot is not supported by the transcripts. On the contrary—while only a full trial by jury can ultimately determine guilt—it seems that an ordinary citizen could probably be indicted on this basis alone.

Approved by the Federation Executive Committee the above statement was reviewed and endorsed by the following full Professors of Law:

Professor Abram Chayes, Harvard University
Professor Vern Countryman, Harvard University
Professor Alan M. Dershowitz, Harvard University
Professor Roger S. Kuhn, George Washington University
Professor Charles R. Nesson, Harvard University

As an interdisciplinary organization not only of natural and social scientists, engineers and doctors, but also of lawyers, FAS has devoted this issue to a matter requiring legal expertise—the problem of impeachment and the Presidential transcripts.

P. "AS, LIKE ALL THINGS, SOME SUBSTANCE, SOME FALSITY." (pg. 777)

From the beginning, the President evidently saw the investigation of Watergate as inspired by his enemies. On 15 September, 1972, for example, he said:

"Just remember, all the trouble we're taking, we'll have a chance to get back one day." (pg. 58)

"I want the most comprehensive notes on all those who tried to do us in." (pg. 63)

And on March 13:

P. Let's face it, I think they are really after Haldeman.

D. Haldeman and Mitchell.

P. Colson is not big enough name for them. He really isn't. He is, you know, he is on the government side, but Colson's name doesn't bother them so much. They are after Haldeman and after Mitchell. Don't you think so? (pg. 116)

He wanted the lid kept on. The date the original indictments were handed down, he thanked John Dean in these terms:

"But the way you have handled all this seems to me has been very skillful putting your fingers in the leaks that have sprung here and sprung there." (pg. 61)

His intention was to cut his losses (as he said directly and indirectly many times); for example:

"The worst may happen but it may not. So you just try to button it up as well as you can and hope for the best, and remember basically the damn business is unfortunately trying to cut our losses." (Sept. 15, pg. 66)

But he wanted the President kept out of it and later told Dean:

"But the President should not become involved in any part of this case. Do you agree with that?" (Feb. 28, p. 87)

President Apparently Encouraged and Ordered Payment of Hush Money

Told that the various blackmail demands would be hard to handle because "we just don't know about those things, because we are not criminals . . .", (March 21, pg. 146) Mr. Nixon says:

P. How much money do you need?

D. I would say these people are going to cost a million dollars over the next two years.

P. We could get that. On the money, if you need the money you could get that. You could get a million dollars. You could get it in cash. I know where it could be gotten. It is not easy, but it could be done. But the questions is who the hell would handle it? Any ideas on that? (pg. 146-7)

After further discussion, he tells Dean:

P. Just looking at the immediate problem, don't you thing you have to handle Hunt's financial situation damn soon? . . .

P. It seems to me we have to keep the cap on the bottle that much, or we don't have any options.

D. That's right.

P. Either that or it blows right now? (pg. 148)

The page references in this Report are from the New York Times edition of The White House Transcripts (published by Bantam Books, \$2.50). It includes an excellent chronology as well as Mr. Nixon's Address to the Nation on April 29, 1974. Abbreviations used are as follows:

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E. John D. Ehrlichman	S. Frank Strickler
H. H. R. Haldeman	W. John J. Wilson

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Still later, returning to the problem, he argues that the payments have to be continued despite the obstruction of justice that they represent:

P. No. Talking about your obstruction of justice, though, I don't see it.

D. Well, I have been a conduit for information on taking care of people out there who are guilty of crimes.

P. Oh, you mean like the blackmailers?

D. The blackmailers. Right.

P. Well, I wonder if that part of it can't be—I wonder if that doesn't—let me put it frankly: I wonder if that doesn't have to be continued? Let me put it this way: let us suppose that you get the million bucks, and you get the proper way to handle it. You could hold that side?

D. Uh, huh.

P. It would seem to me that would be worthwhile. (March 21, pg. 154)

Again still later, he says:

P. But at the moment, don't you agree it is better to get the Hunt thing that's where that—

D. That is worth buying time on.

P. That is buying time, I agree. (pg. 156)

Returning to the subject, he still considers the payments feasible.

P. Now, let me tell you. We could get the money. There is no problem in that. We can't provide the clemency. Money could be provided. Mitchell could provide the way to deliver it. That could be done. See what I mean? (pg. 167)

Finally, he concludes that Dean should "get it".

P. That's why for your immediate things you have no choice but to come up with the \$120,000, or whatever it is. Right?

D. That's right.

P. Would you agree that that's the prime thing that you damn well better get that done?

D. Obviously he ought to be given some signal anyway.

P. (Expletive deleted), get it . . . (pg. 172)

And he later confirms this thought by saying:

P. Seems we're going around the track. You have no choice on Hunt but to try to keep—

D. Right now, we have no choice.

P. But my point is, do you ever have any choice on Hunt? That is the point. No matter what we do here now, John, whatever he wants if he doesn't get it—immunity, etc., he is going to blow the whistle. (pg. 176)

Thus Dean was encouraged and instructed to pay funds to Hunt. The conversation from which these Presidential comments are drawn is itself one of the 45 overt acts in furtherance of the conspiracy listed in the federal Grand Jury indictment.

President Knew of, But Ignored, Obstruction of Justice Problem

On March 21, the President was told that Liddy had approached Kleindienst immediately after the breakin in an effort to get the Cubans out of jail, and that Liddy had

reported that they would all try to "ride this thing out" but then started making demands for money; in providing these funds, Dean reported to the President, four of his closest supporters were involved in an obstruction of justice.

P. In other words the bad it does. You were taking care of witnesses. (pg. 143)

After discussing Haldeman's involvement, he concludes, "I think we should be able to handle that issue pretty well. May be some lawsuits" (pg. 143). Thus the President assures the conspirators in the cover-up that the obstruction of justice problem can be "handled."

Mr. Nixon Rejected Possibility of Full Disclosure

Mr. Nixon considered the possibility of full disclosure of the Watergate case on at least two occasions and rejected it in favor of maintaining the appearance of being forthcoming while actually holding back and covering up as much as possible. For example, on March 13, Dean raised the possibility of full disclosure, but Nixon said it was too late.

D. . . . These questions are just not going to go away. Now the other thing that we talked about in the past, and I still have the same problem, is to have a "here it all is" approach. If we do that . . . [in original]

P. And let it all hang out.

D. And let it all hang out. Let's with a Segretti—etc.

P. We have passed that point. (pg. 100)

Later, the President asks if it is indeed too late to go the "hang-out road" but in response to Dean's caution, it becomes obvious that he did not mean putting out the whole story at all:

D. . . . There is a reason for not everyone going up and testifying.

P. I see. Oh no, no, no! I didn't mean to have everyone go up and testify.

D. Well, I mean they're just starting to hang-out and say here's our story—

P. I mean put the story out PR people, here is the story, the true story about Watergate. (March 13, pgs. 119-120)

In short, the President took the same line he later took on March 20, when he talked to Dean; they then discussed strategy, agreeing on no real response ("stone-walling") with lots of noises about willingness to cooperate and possibly some very vague documents.

As late as April 16 Mr. Nixon was perfectly prepared to let the conspiracy remain covered up, and indeed contemplated calling Henry Petersen about it:

D. What would be the best thing in the world is if they decide that they've got nothing but technical cases against people at the White House and they chuck them all out. That is not impossible.

P. Should I telephone him?

D. No, sir. (pgs. 520-521)

These three quotations show ample intent to coverup to the extent possible.

Mr. Nixon Apparently Used Dean and Ehrlichman Investigations As Coverup Devices

The President acted on this intent by misleading the public and prosecutors by a series of devices. He announced that he could "categorically" assert as a result of the Dean report that no one in the White House was involved. But the Dean report on which Mr. Nixon said he based his statement of August 29 was, as Dean has testified, non-existent. Later Dean was asked to make a statement "for internal purposes" and to answer questions.

Ehrlichman later clarified the purpose of a report; it was to further the coverup rather than to expose it:

D. . . . I am not talking about documents you see. I am talking about something we can spread as facts. You see you could even write a novel with the facts.

P. (inaudible)

D. (inaudible) . . .

E. And I am looking to the future, assuming that some corner of this thing comes unstuck, you are then in a position to say, "Look, that document I published is the document I relied on, that is, the report I relied on."

P. This is all we knew.

H. That is all the stuff we could find out—

E. And now this new development is a surprise to me—I am going to fire A, B, C and D, now. (March 22, pgs. 204-5)

Dean was unable or unwilling to complete the requested report. Later an Ehrlichman "investigation" and "report" were concocted for the same reasons as the earlier Dean report. In two public statements on April 17 and 30, Nixon said that he had launched intensive new inquiries on March 21 after hearing serious charges from Dean, and that he had ordered the heads of current investigations to report directly to him. On August 22, the press asked Mr. Nixon to whom he was referring, since Gray, Petersen and Kleindeinst all denied that the President spoke to them. In answer, Nixon said that he spoke with Ehrlichman about an investigation on March 27. This lapse of six days is not surprising, even for an "immediate" move, since March 21 was arbitrarily picked as the date when new inquiries were begun:

P. "Four weeks ago we," Why don't we say, shall we set a date? That sounds a hell of a lot stronger if we set a date.

E. All right.

P. "On March 21, I began new inquiries," Strike that. "I ordered an investigation, new inquiries throughout the government—" (April 17, pg. 700)

If an investigation was ordered, the conversation was not among the released transcripts. On the contrary, Ehrlichman was instructed to tell the Attorney General of the U.S. that he "owed" a probable defendant (Mitchell) information from the Grand Jury.

If Ehrlichman had been asked to make a true investigation, the very fact that he was chosen for the task would show it to be a sham; after all, he was gravely implicated in the March 21 conversation with Dean which

Nixon claims he was investigating. But there is no question that the investigation was not meant to be thorough. The immediate purpose for the "report" was simply to persuade Mitchell to take the rap, and the President made his long-range purposes as clear for Ehrlichman as he had for Dean:

P. . . . I've got to have a report indicating . . . I want somebody to say, now look, here are the facts. Of the White House people (unintelligible). There are no other higher-up. The White House (unintelligible). Put a cap on it. . . . (April 14, 1973, pg. 305)

E. When somebody comes to (unintelligible) what the hell was the White House doing all this time? Then you're in a position to say well, we began to investigate personally the external circumstances and we came to some conclusions—we acted on those conclusions . . .

P. I agree. I think the record should be made we have talked to him [the prosecutor] so he knows that the President has moved on this. (April 15, pg. 339)

Mr. Nixon Sometimes Did Not Want to Know

Mr. Nixon says that he is pleased with the way the coverup has exploited his isolation.

P. Yeah. You see Dean's little game here (unintelligible). One of the reasons this staff is so damned good. Of course he didn't report to me . . . (April 17, pg. 635)

E. There were eight or ten people around here who knew about this [hush money], knew it was going on. Bob knew, I knew, all kinds of people knew.

P. Well, I knew it. I knew it.

E. And it was not a question of whether—

P. I must say though, I didn't know it but I must have assumed it though but you know, fortunately—I thank you both [Haldeman and Ehrlichman] for arranging it that way and it does show the isolation of the President, and here it's not so bad— . . . (April 14, pg. 328)

Despite his many public statements that he wanted to get to the bottom of the case, Mr. Nixon shows his real reluctance to discover the truth:

P. . . . There's one of two people I can verse myself in it enough to know the thing, but I am not sure that I want to know . . . (April 14, pg. 306)

P. . . . Unless I make a mistake on this thing, the way I analyze it, and I have stayed deliberately away from it, but I think I can sense what it is. (Feb. 28, pg. 73)

Mr. Nixon Sought to Use The Presidency As a Device to Justify Coverup

Nixon's concern for his own fate emerges more and more clearly as his advisers are implicated one by one:

P. We can't get the President involved in this. His people, that is one thing. We don't want to cover up, but there are ways . . . (April 14, pg. 430)

The famous March 21 conversation at which Dean supposedly told all for the first time shows clearly that a major motive for the coverup was to protect the president:

D. . . . Bob and John and John Mitchell and I can sit down and spend a day, or however long, to figure out one, how can this be carved away from you, so that it

does not damage you or the Presidency. It just can't! You are not involved in it and it is something you shouldn't—

P. That is true! (pg. 151)

Aside from these direct statements, Mr. Nixon's intent to cover up the coverup can be inferred from discussions of executive privilege, national security, commutation of sentences, clemency, immunity from prosecution, blaming it all on Mitchell, perjury, lies and manipulating Henry Petersen.

Mr. Nixon Seems to Have Used Executive Privilege as a Device

On March 13, he discussed the possibility of using executive privilege as a shield for Colson and Chapin by having them carried on the White House rolls as consultants without pay; but he concluded that this ruse should be applied only to Colson, saying:

"Well, can't—that would such an obvious fraud to have both of them as consultants, that that won't work. I think he is right. You would have to leave Chapin." (pg. 93)

He instructs Dean to tell Colson of the arrangement:

P. I would tell Chuck. Tell him he is not to say anything, frankly. (pg. 94)

Haldeman points out that the use of executive privilege "is the only active step that you have taken to cover up the Watergate all along . . ." (March 22, pg. 209). Mr. Nixon planned to use executive privilege comprehensively for the period after the break-in on June 17:

[Mr. Ehrlichman is speaking Nixon's part as the dialogue begins.]

E. Since I had no communication with anybody on the White House staff about this burglary or about the circumstances leading up to it, there is no occasion for executive privilege in this matter.

P. With regard to this, I want you to get to the bottom of it. So there will be no executive privilege on that. On other matters—

H. And that takes you up to the June 17th. What do you do after June 17th?

P. Use the executive privilege on that. (March 27, pg. 262)

On April 17, when it is apparent that Dean is beginning to crack, Haldeman, Ehrlichman and Nixon are very concerned that he be handled carefully and that, even if he is indiscreet, the prosecutors will stay out of "privileged" matters:

P. When I talked to him [Dean] I said, "Now John, any conversations are (unintelligible)." I said, "Anything (unintelligible) National Security are (unintelligible) you understand?" He said, "Yes (unintelligible) testified to it (unintelligible)" . . . The point is, if you break it off with him, then he could go out and say "Screw the (unintelligible)."

H. No he can't. It's not his privilege. It's yours.

P. I know it's mine, but—

H. If he screws the privilege—

P. Well, I think you have to charge Henry Petersen

or whoever is in charge here with protecting your privilege and then that's got to go down to Silberman and Silberman has to be cautioned that he is not to go into matters of executive privilege—he is not to go into matters of national security importance. Any matters involving a conversation with the President—or national security, anything like that, *they can ask me* [italics added]. (April 17, pg. 645)

President Apparently Saw Concept of National Security as a Device

The misuse of national security to cover up politically embarrassing or illegal acts is apparent throughout the transcripts. For example, on March 21 Mr. Nixon expresses concern about the Ellsberg's case's coming to light and seeks to manufacture a cover story:

P. What is the answer on this? How you keep it out, I don't know. You can't keep it out if Hunt talks. You see the point is irrelevant. It has gotten to this point—

D. You might put it on a national security grounds basis.

H. It absolutely was.

D. And say that this was—

H. (unintelligible) —CIA—

D. Ah—

H. Seriously,

P. National Security. We had to get information for national security grounds.

D. Then the question is, why didn't the CIA do it or why didn't the FBI do it?

P. Because we had to do it on a confidential basis.

H. Because we were checking them.

P. Neither could be trusted. (March 21, pg. 163)

After discussing how this would serve well the purposes of Bud Krogh, the President says:

P. Bud should just say it was a question of national security, and I was not in a position to divulge it. Anyway, let's don't go beyond that . . . (pg. 164)

Mr. Nixon explains elsewhere that national security covers such activities as "Kraft's stuff" and other leaks in columns. National security is not an overblown concept to the President and his men; it is a line of defense.

P. . . . What's Haldeman's line of defense? . . . "I never approved anything of the sort. I just"—you know that—What's Ehrlichman's? There is no doubt he knows nothing about it. The earlier thing—yes. We did have an operation for leaks, etc. What would you say if they said, "Did you ever do any wiretapping?" That is a question they will ask. Were you aware of any wiretapping?

E. Yes.

P. You would say, "Yes." Then, "Why did you do it?" You would say it was ordered on a national security basis.

E. National security. We had a series of very serious national security leaks. (March 27, pg. 236)

National security is not to be used indiscriminately, however; the President and his men pick their fights.

E. I don't think he [Krogh] will have to [resign]. Number one, I don't think Hunt will strike him. If he did, I would put the national security tent over this whole operation.

P. I sure would. (March 27, pg. 238)

The President Seems to Have Used Clemency As a Tool For Keeping Hunt and Dean Quiet

On March 21, the President admitted:

"As a matter of fact, there was a discussion with somebody [actually Colson] about Hunt's problem on account of his wife and I said, of course commutation could be considered on the basis of his wife's death, and that is the only conversation I ever had in that light." (pg. 146)

Later, on April 14, in an 11:22 P.M. telephone conversation with Ehrlichman, he again seeks to use clemency and urges planting in John Dean's mind that he, the President, is the only one who can provide it:

P. . . . Look he has to look down the road to one point that there is only one man who could restore him to the ability to practice law in case things go wrong. He's got to have that in the back of his mind.

E. Uh, huh.

The President Tried to Limit Immunity From Prosecution to Protect The Coverup

The President talked of limiting the use of immunity in general:

P. . . . I better get [Petersen] in and tell him . . . "I've thought over the immunity thing and I want nobody on the WH staff given immunity. I don't want anybody shown any consideration whatever." (April 17, pg. 659)

Mr. Nixon's real, specific concern is the possibility that Dean may get immunity and reveal Nixon's and others' involvement in the conspiracy. Earlier on April 17, in a 9:47 conversation, he says:

P. . . . Dean is trying to tell enough to get immunity and that is frankly what it is Bob. (pg. 619)

Ehrlichman argues on his own and Colson's behalf that fears about Dean are well-founded:

E. . . . that will seriously impair the Presidency ultimately. 'Cause it will be very easy to argue—that all you have to do is read Dean's testimony—look at the previous relationships—and there she goes! So, he [Colson] says the key to this is that Dean should not get immunity. That's what he wants to tell you.

P. Well he told me that, and I couldn't agree more. (April 17, pgs. 620-21)

Knowing the critical importance of keeping Dean quiet, Mr. Nixon met with Petersen at 2:46. One purpose was to keep the prosecutors away from the national security area, or matters involving a conversation with the President, or "anything like that"; even if Dean chose to talk, in other words, they were not to allow him to do so (see page 5 above). Another purpose was to remind Petersen of the fact that he himself also had a stake in Dean's silence, but Mr. Nixon did not persuade him of this:

P. . . . [Dean] will probably have told people that he

has information from the Grand Jury. Now you just have to evaluate that yourself. I just don't want the Department of Justice, and you particularly, after your, ah—the way you have broken your—

HP. Mr. President—I am sure that is so.

P. I don't want to get embarrassed, see?

HP. I have no concern about that. (April 17, pg. 666)

A public statement on immunity issued later that day by President Nixon said, "I have expressed to the appropriate authorities my view that no individual holding, in the past or at present, a position of major importance in the Administration should be given immunity from prosecution." (pg. 709)

On April 19, after putting out the statement, Mr. Nixon asked the lawyers for Haldeman and Ehrlichman whether they wanted Dean given immunity and explained that his statement was designed to prevent it:

P. They must have told him what I—I—they—I—think—have told Dean that, "If he'll—if he can get Haldeman and Ehrlichman—he gets immunity." Now, on that point, do you want Petersen to give him immunity, or not?

W. Uh—. . .

P. See, that's why—I put out a statement that no major figure should be given immunity. (Italics added, April 19, 8:25 P.M. meeting with Wilson and Strickler. pg. 764)

The President Seems to Have Sought Fall Guys To Cut His Losses

By April 14, Nixon and his men believed that Mitchell was the real target of the investigation and that, by making him a fall guy, they could escape indictment themselves. The conspiracy to obstruct justice took the new form of simply protecting the President and his closest advisers. Their strategy was to blame it all on Mitchell, as the head of the re-election campaign:

P. What do Colson et al, Colson and Shapiro, think we ought to do under these circumstances? Get busy and nail Mitchell in a hurry?

E. Yes. (pg. 284)

In the same conversation, Ehrlichman suggests the line to be followed, and Haldeman makes a revealing comment:

E. That you [Nixon] have a report from me based on three weeks' work; that when you got it, you immediately acted to call Mitchell in as the provable wrong-doer, and you say, "My God, I've got a report here. And it's clear from this report that you are guilty as hell. Now, John, for (expletive deleted) sake go in there and do what you should. And let's get this thing cleared up and get it off the country's back and move on." And—

H. Plus the other side of this is that *that's the only way to beat it now*. (Italics added) (April 14, pg. 300)

Mr. Nixon's Involvement with Perjury, Lying and Evasion

Perjury, lying and evasion were major weapons in the coverup. Invariably, Nixon takes statements that his subordinates have perjured themselves very lightly. In discussion of "Haldeman's problem" on March 21, he is told that Strachan is part of the conspiracy and has lied twice already; he approves of this:

D. He was judicious in what he relayed, but Strachan is as tough as nails. He can go in and stonewall, and say, "I don't know anything about what you are talking about." He has already done it twice you know, in interviews.

P. I guess he should, shouldn't he? I suppose we can't call that justice, can we? (March 13, pgs. 116-117)

Earlier, in the morning, the President is told by Dean that Magruder and Porter perjured themselves in the Grand Jury. After hearing what they said, Mr. Nixon responds:

P. The point is, that is not true?

D. That's right.

P. Magruder did know it was going to take place?

D. Magruder gave the instructions to be back in the DNC.

P. He did?

D. Yes.

P. You know that?

D. Yes.

P. I see. OK. (pg. 140)

There are many similar examples.

Mr. Nixon did not promptly report these allegations of perjury to the proper authorities. But beyond that, he actively encouraged evasion. Also on March 21, Dean told Haldeman that saying you have forgotten before the Grand Jury risked perjury; the President responded:

"But you can say I don't remember. You can say I can't recall. I can't give any answer to that that I can recall." (pg. 171)

Moreover, Mr. Nixon saw to it that Strachan and Colson had inside information on what others had told the Grand Jury, so that they could avoid perjury themselves. On April 14, 1973, in an 11:02 P.M. conversation with Haldeman, the President said:

P. Let me ask you this: I wonder if it is not only fair, but in our interest, for either you or John without going into too much detail to fill him in on Magruder? I mean, having in mind Colson could—

H. Who's (unintelligible)

P. Colson. I mean we have no interest—you know what I mean—in getting him up there, you know, guilty on a perjury charge. (pg. 414)

He is advised by Haldeman that the testimony of Magruder and Colson is not inconsistent. The President says:

P. Oh, that could be right. Chuck could say, yes, the Liddy project, sure but I thought the Liddy project was something else. (pg. 414)

He returns to this same theme a few minutes later in an 11:22 P.M. conversation with Ehrlichman:

P. We'll see. We'll see. Do your other business, etc. John, too. I wonder if we shouldn't reconsider, if you shouldn't, I mean you have to consider this—rather than having Colson go in there completely blind, give him at least a touch up—or do you think that is too dangerous.

E. Say that again—I didn't quite hear it.

P. Colson—rather than just saying nothing to him, if it isn't just as well to say—look you should know that Magruder is going to testify, etc., or is that dangerous according to Kleindienst? . . .

P. Let me put it this way: I do think we owe it to Chuck to at least—

E. Sure

P. So that he doesn't, I mean, go in there and well frankly on a perjury rap. (pg. 420)

Equally "frank" is a conversation on the same day regarding Strachan:

H. Can I give Strachan a report on this?

P. Sure. What is your view about his perjury?

E. I don't know.

H. He's going to the Grand Jury Monday morning. That's why it's better that he be given this information so he doesn't perjure himself.

P. Right. (pg. 385)

The President was not above coaching witnesses:

P. Now the question: well Mr. Dean, is: "Why didn't you tell the President before?" And your answer there is, "I didn't know" That's what you told me last night [in a meeting when the tape had run out]. You see, I don't want you, John, to be in a position and frankly I don't want the President to be in the position, where one of his trusted people had information that he kept from him.

D. I did not know.

P. Fine. You did not know. How did you find out then? But you can handle that.

D. That's right. (April 16, pgs. 511-12)

The President Violated Petersen's Confidence

The President made himself perfectly clear twice:

P. . . . In other words—you understand now, *you're talking only to me* [Italics added] . . . In other words, I am acting counsel and everything else. I don't want it from anybody else (inaudible). (April 16, pg. 541)

P. . . . Let me say first, I just want to know if there are any developments I should know about and, second, that of course, as you know, *anything you tell me*, as I think I told you earlier, *will not be passed on*. [Italics added]. (April 16, pg. 608)

In fact, however, Mr. Nixon did not hesitate to pass information gleaned from Petersen to probable defendants and even to their attorneys. Although Dean was plea bargaining with the prosecutors at the time, the President advised him, on April 16, 1973 at the 10:00 meeting that Petersen:

P. . . . seems to think that the obstruction of justice thing is a (expletive omitted) hard thing to prove in court.

D. That's right.

P. Which I think should be some comfort to you. (pg. 508)

Mr. Nixon Did Not Level with Petersen

In discussing with Petersen the crux of the case against Haldeman, the \$350,000 fund, Nixon says:

P. I knew about the fund. I don't know how it all went—

HP. This is how it developed. It developed, as related to us, as money over which Haldeman exercised control. That money was delivered to LaRue to be used for payments, at least a portion of it.

P. Some of it. Right. I think Haldeman would say that's true. I think he would. *I don't know, but we'll see . . .* [Italics added] (April 16, pg. 613)

In fact, Nixon had heard about Haldeman's involvement with the fund on many occasions, and in great detail, including the March 21 conversation with Dean.

On April 27, he said:

P. . . . Because boy, if there's one thing in this case as Henry will tell you, since March 21st when I had that conversation with Dean, I have broken my ass to try to get the facts of this case. (April 27, pg. 782)

This was nine months after the break-in and a month after March 21; the effort is betrayed by the foregoing quotes. Also, on April 27, Nixon gives Petersen his account of the hush money fragment, maintaining that he had explored the question of \$120,000 for Hunt:

"But my purpose was to find out what the hell had been going on before. And believe me, nothing was approved. I mean as far as I'm concerned—as far as I'm concerned turned it off totally." (pg. 776)

As noted earlier, this is false. The President had repeatedly encouraged the spending of this sum and finally told Dean "(expletive deleted) get it."

At his April 19 meeting with Haldeman's and Ehrlichman's lawyers, he discloses that Petersen has told him that their clients will be called before the Grand Jury, and that they might well be indicted even if they resigned. The lawyers discuss how they hope their informal contacts with the prosecution will develop as a source of

information. Strickler notes how nicely, together, the President and the lawyers will be able to keep abreast of events:

S. The problem—that we should be trying to get information at Seymour Glanzer's level and you're in conversation with the Assistant Attorney General, but yet it seems worthwhile and productive." (pg. 773)

If there are two exchanges which characterize the transcripts, they are the following:

COVER UP

P. . . . Every member of the White House staff who has been mentioned (unintelligible) mentioned as a—has submitted a sworn affidavit to me denying any knowledge of.

E. any prior knowledge.

P. any knowledge of or participation in. Could we say this?

E. No—I wouldn't.

P. Why? Not true? Too defensive?

E. Well, number one—it's defensive—it's self serving. Number two—then that establishes the existence of a piece of paper that becomes a focal point for a subpoena and all that kind of thing.

P. (unintelligible) something.

(long pause) (March 30, pg. 271)

. . . AND STAY IN FRONT

P. . . . Above everything else and I am following it every inch of the way and I don't want any question, that's of the fact that I am a way ahead of the game. You know, I want to stay one step ahead of the curve. You know what I mean?

HP. I understand. (April 15, pg. 494)

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